Majlis Peguam v Sunil Singh Gill

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W–02–732 OF 1996
GOPAL SRI RAM, ABDUL KADIR SULAIMAN AND ARIFIN ZAKARIA JJCA
26 SEPTEMBER 2002

Legal Profession — Admission — Period of instruction (pupillage) — Qualified persons — Pupil master having practice in Labuan — Whether considered as an advocate and solicitor who is and has been in active practice in Malaysia — Legal Profession Act 1976 s 13(1)

The respondent, a Malaysian citizen, graduated in law from the National University Singapore. After completing his pupillage, he was called to the Singapore Bar and practised in Singapore for approximately 19 months. He returned to Malaysia and chambered with one George Pathmanathan with the view of being admitted to the Malaysian Bar ('the appellant'). The appellant granted him one and a half months shortening of his chambering period, considering his practice in Singapore. The appellant objected the respondent's petition when the admission came on for hearing. The High Court judge who heard the petition overruled the objection, and admitted and enrolled the respondent. Hence, this appeal.

The crux of the whole issue was whether the respondent satisfied s 13(1) of the Legal Profession Act 1976 ('the Act') by chambering with an advocate and solicitor from Labuan.

Held, dismissing the appeal:

The ordinary cannons of construction should be applied when interpreting s 13(1) of the Act. The respondent had satisfied the requirements of the said provision. Mr George Pathmanathan was at the material time an advocate and solicitor. Equally, he had an active practice in Malaysia, namely in the Federal Territory of Labuan (see paras 4 and 6); *Samantha Murthi v Attorney General Malaysia & Ors* [1982] 2 MLJ 126 followed and *Malaysian Bar v Mutang Tagal* [1985] 1 MLJ 231 distinguished.

[**Bahasa Malaysia summary**

Responden, seorang warganegara Malaysia, telah memperolehi ijazah undang-undang daripada Universiti Kebangsaan Singapura. Selepas responden menamatkan pelatihannya, beliau diterima-masuk ke Majlis Peguam Singapura dan menjalankan amalan guamannya di Singapura selama lebih kurang 19bulan. Beliau kembali ke Malaysia dan menjalani latihan peguam dengan George Pathmanathan dengan keinginan diterima-masuk ke Majlis Peguam Malaysia ('perayu'). Perayu mengizinkan masa pelatihannya dipendekkan sebulan setengah dalam mengambilkira amalan guamannya di Singapura. Perayu kemudiannya membantah permohonan responden semasa pendengaran petisyen untuk penerimaan-masuk. Hakim Mahkamah Tinggi yang mendengar permohonan responden menolak bantahan perayu dan, menerima dan mendaftarkan responden. Oleh yang demikian perayu membuat rayuan ini.

Persoalan utama dalam kes ini adalah sama ada responden memenuhi syarat-syarat di bawah s 13(1) Akta Profession Undang–Undang ('Akta tersebut') dengan menjalani pelatihannya di bawah seorang peguam di Labuan.

Diputuskan, menolak rayuan:

Kaedah tafsiran biasa patut digunakan apabila mentafsir s 13(1) Akta tersebut. Responden telah memenuhi syarat-syarat yang dikemukakan dalam peruntukan tersebut. Encik George Pathmanathan pada masa berkenaan adalah seorang peguamcara dan peguambela. Beliau juga masih aktif menjalankan amalan guamannya di Malaysia, iaitu di Wilayah Persekutuan Labuan (lihat perenggan 4 dan 6); *Samantha Murthi v Attorney General Malaysia & Ors* [1982] 2 MLJ 126 diikut dan *Malaysian Bar v Mutang Tagal* [1985] 1 MLJ 231 dibeza.]

Notes

For cases on period of instruction (pupillage), see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1486–1498.

Cases referred to

Malaysian Bar v Mutang Tagal [1985] 1 MLJ 231 (distd)
Samantha Murthi v Attorney General Malaysia & Ors [1982] 2 MLJ 126 (folld)

Legislation referred to

Legal Profession Act 1976 s 13(1)

Haji Sulaiman Abdullah (Anita Sockalingam with him) (Zain & Co) for the appellant.
Respondent in person (David Chong & Co).
Dato' Abdul Aziz Rahim for the AG's Chambers.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] The respondent before us is a Malaysian citizen. In 1993, he graduated from the National University of Singapore. He obtained an LLB Honours. He stayed on in Singapore. He read in chambers there. After completing his pupillage, he was called to the Singapore Bar. He practised in Singapore for approximately 19 months. Thereafter, he returned home to Malaysia. He wanted to have himself called, admitted and enrolled as an advocate and solicitor of these courts. He sought and found a pupil master, Mr George Pathmanathan. Mr Pathmanathan is an advocate and solicitor admitted and enrolled under the provisions of the Legal Profession Act 1976 ('the Act'). Mr Pathmanathan had, we have been advised from the Bar by learned counsel appearing for the appellant, a current practising certificate at all times material to this appeal. In other words, he could appear and plead any case at any level before any of the courts of Semenanjung Malaysia. Now, Mr Pathmanathan also has a practice on the island of Labuan. It is in his chambers there that the respondent attended as a pupil. In due course, the respondent presented

his petition for admission before the High Court of Malaya. The appellant granted him one and a half months shortening of his period of pupillage by taking into account his experience in Singapore. But when the respondent's petition for admission came on for hearing, the appellant objected. The learned judge who heard the petition overruled the objection. He admitted and enrolled the respondent. He gave a number of reasons and made a number of observations in the course of his judgment. Principally, he held that the respondent's pupillage came within the terms of section 13(1) of the Act. That section reads as follows:

> Subject to subsection (4) a pupil shall serve his period of pupillage with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupillage …

[2] The critical words in the foregoing provision for the purposes of the present appeal are 'an advocate and solicitor who is and has been in active practice in Malaysia'. Learned counsel for the appellant, Tn Hj Sulaiman Abdullah, has addressed a very carefully formulated argument in which he contends that Mr George Pathmanathan does not fall within the above-quoted words of s 13(1). He has with his customary ability drawn our attention to several sections in the Constitution (Amendment) (No 2) Act 1984. For reasons which will become apparent in a moment, we find it unnecessary to reproduce or comment upon any of the above provisions. But we must address some of the background which has been very usefully set out for us by counsel for the appellant.

[3] Historically, the island of Labuan has always formed part of what is now known as the State of Sabah (formerly known as British North Borneo and later as North Borneo). In 1984, Sabah excised Labuan from its geographic boundaries identified by the measurements appearing in the Constitution (Amendment) (No 2) Act 1984. Labuan thereafter became a Federal Territory. But it remained and remains as part of Malaysia. So, as far as political delineation in accordance with constitutional provisions is concerned Malaysia is now made up of the several states in Semenanjung Malaysia, the States of Sabah and Sarawak in East Malaysia as well as the Federal Territories of Kuala Lumpur, Labuan and most recently, Putrajaya.

[4] Applying the ordinary canons of construction to s 13(1) and taking into account the background we have just set out the answer to the question: Was Mr George Pathmanathan an advocate and solicitor who is and has been in active practice in Malaysia, must be in the affirmative. At the risk of repetition, he was at the material time an advocate and solicitor. Equally, he had an active practice in Malaysia, namely in the Federal Territory of Labuan.

[5] The facts of the present case in our view are abundantly covered by authority that is plainly binding on us. We refer, of course, to the decision of the former Federal Court in *Samantha Murthi v Attorney General Malaysia & Ors* [1982] 2 MLJ 126. In that case, Mr Samantha Murthi had read in the chambers of Mr KCI Reddy in Kuching, Sarawak. Mr Reddy had been admitted to practice as an advocate and solicitor in the High Court of Malaya.

He practised for some time before these courts. Later he migrated to Sarawak where he commenced and continued his practice. Mr Samantha Murthi's petition for admission and enrolment was dismissed by the High Court on the ground that he had not satisfied the requirements of s 13(1). He appealed. A particularly strong Federal Court (Suffian LP, Raja Azlan Shah CJ (Malaya) and Salleh Abas FJ) reversed. That court held that Mr KCI Reddy came within the phrase we have extracted from s 13(1) earlier in this judgment. The following passage in the judgment of Suffian LP is worthy of quotation:

> It is clear that the intention of the legislature when making these two amendments is to treat Sabah and Sarawak and Malaya as one country for the purpose of pupillage, while maintaining the separateness of the Bars of the three areas.
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> In our judgment the legislature must be regarded as manifesting the same intention when choosing the word 'Malaysia' in s 13(1) of the Legal Profession Act.
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> The learned judges who considered this section in the High Court were of the view that Mr Reddy must be not only an advocate and solicitor under s 3 which he is, but he must also be one who is in possession of a practising certificate of Malaya; and that otherwise he cannot accept a pupil intending to be admitted to the Malayan Bar. With respect we do not agree.
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> What is in dispute in this case is the meaning which we should give to the phrase 'active practice in Malaysia' in s 13(1). As earlier stated, that section provides that 'a pupil shall serve his period of pupillage with an advocate and solicitor who is or has been in active practice in Malaysia etc' Thus there are two requirements: First, the master must be:
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> (1) 'an advocate and solicitor' within the meaning of s 3 of the Act; and
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> (2) he 'is or has been in active practice in Malaysia'.
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> The learned judges in the High Court ruled that Mr Reddy is not an advocate and solicitor under s 3 because he does not hold a practising certificate issued under s 29 of the Act authorising him to practise at the Malayan Bar.
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> With respect we do not agree with this ruling, because there is nothing in s 3 to say that he must be in possession of such a certificate. In fact Mr Param Cumaraswamy conceded that Mr Reddy is an advocate and solicitor under s 3. Under this section an advocate and solicitor is defined as:
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> > 'an advocate and solicitor of the High Court *admitted and enrolled* under this Act or under any written law prior to the coming into operation of this Act.'
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> This section does not say that to be an advocate and solicitor one must have a practising certificate. In our judgment Mr Reddy is an advocate and solicitor within the Act although he has no practising certificate under the Act. As long as he has been 'admitted and enrolled' under the Act or any previous written law, he is an advocate and solicitor within the meaning of the Act. A practising certificate is not a requirement of s 3, but of s 29, which has nothing to do with the definition. The learned judges were therefore in error ... .

[6] Applying that passage and indeed the whole of the learned Lord President's reasoning to the facts of the present instance, we find the respondent to have satisfied the requirements of s 13(1) of the Act. Indeed, we are confident in saying that the present case is indistinguishable from *Samantha Murthi v Attorney General Malaysia & Ors.*

[7] Our attention was also drawn to another decision of the Federal Court in *Malaysian Bar v Mutang Tagal* [1985] 1 MLJ 231. The facts of that case are readily distinguishable from the present. In *Mutang Tagal*, the pupil master was not admitted and enrolled as an advocate and solicitor of the High Court of Malaya. That accounts for the decision in that case.

[8] Learned counsel for the appellant has addressed and argued the other issues dealt with by the learned judge and some of the observations made by him in his judgment. He has criticised these. He has asked us to state our views upon these matters. He must forgive us if we decline to do so. They are wholly irrelevant and not *res integra* in the present appeal. Any view we express about them will be wholly gratuitous and of no jurisprudential value.

[9] For the reasons already given, this appeal must fail. We might add that after hearing the able argument of learned counsel for the appellant, we found it unnecessary to call upon the respondent who appears in person before us to make a reply. Nevertheless, we would thank Tn Hj Sulaiman Abdullah for the clarity of his argument and the citation of relevant authority and say that without his assistance this *ex tempore* judgment would not have been possible.

Appeal dismissed.

Reported by Jeyanthi Mala